Hjh Halimatussaadiah bte Hj Kamaruddin v Public Services Commission, Malaysia & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-05-92
ABDUL HAMID OMAR LP, EDGAR JOSEPH JR AND MOHAMED DZAIDDIN SCJJ
5 AUGUST 1994

Public Servants *— Dismissal — Procedure — Termination of clerk for failure to comply with civil servants' dress code — Whether decision to dismiss made by proper authority — Public Officers (Conduct and Discipline) Chapter 'D' General Orders 1980 orders 24, 26*

Constitutional Law *— Fundamental liberties — Freedom of religion — Whether prohibition against wearing of 'purdah' an infringement of constitutional right — Federal Constitution art 11(5)*

Words and Phrases *— 'Purdah'*

The appellant, a clerk in the Perak State Legal Adviser's office, had been wearing the 'purdah' during office hours, in contravention of a government circular which prohibited lady civil servants from wearing attire covering the face during office hours. The disciplinary board for Group C officers at the Attorney General's chambers ('the disciplinary board') decided that disciplinary proceedings should be taken against her with a view to her dismissal and informed the Public Services Commission ('the PSC') of its decision. The secretary of the PSC requested the appellant to show cause as to why she should not be dismissed. The appellant's reply gave her reasons for wearing the 'purdah' and quoted verses from the Quran. The PSC decided to dismiss the appellant from service under general order 26 of the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 ('GO 'D''). The appellant brought an action in the High Court challenging the validity of her dismissal by the PSC. The action was dismissed. [See [1992] 1 MLJ 513.]

The appellant has appealed on the grounds that: (i) the decision to dismiss her had effectively been made by the disciplinary board and not the PSC, which was in fact the appropriate disciplinary authority under order 24 of GO 'D'; (ii) she was not obliged to comply with the circular as it did not mention the word 'purdah'; (iii) her constitutional right under art 11(1) of the Federal Constitution to profess and practise her religion had been infringed; and (iv) she was obliged to wear the purdah to avoid a 'fitnah' (slander) against her as, according to Surah 24 of the Quran, a Muslim woman must always cover her face, except the eyes.

Held, dismissing the appeal:

(1) The procedure adopted by the disciplinary board and the PSC had complied strictly with orders 24 and 26 of GO 'D'. The disciplinary board had decided that proceedings for dismissal should be taken against the appellant and referred the matter to the PSC, which then wrote a show cause letter to her. The appellant was given every opportunity to exculpate herself and, after due consideration of her representations, the PSC decided to dismiss her. Therefore, the appellant failed on the first ground.

(2) There was no ambiguity in the circular which did not allow lady civil servants to wear, inter alia, any attire covering the face. The dictionary meaning of 'purdah' is a cloth or curtain for keeping women from sight or a veil or cloth to hide a woman's face. It could not be said that the circular was unclear to the appellant or that she did not understand its meaning or purpose.

(3) The freedom of religion guaranteed under art 11(1) of the Federal Constitution is not absolute as art 11(5) does not authorize any act contrary to any general law relating to public order, public health or morality. The prohibition against the wearing of attire covering the face by lady civil officers during work does not affect the appellant's constitutional right to practise her religion. The wearing of purdah had nothing to do with the appellant's constitutional right to profess and practise her Muslim religion.

(4) The appellant's interpretation of Surah 24 was misconceived. In the circumstances, the judge was right to reject this aspect of the appellant's evidence regarding the wearing of purdah.

[Bahasa Malaysia summary

Perayu, seorang kerani di Jabatan Penasihat Undang-Undang Negeri Perak, telah memakai 'purdah' semasa waktu pejabat, bertentangan dengan surat pekeliling kerajaan yang melarang pegawai awam wanita daripada memakai pakaian yang menutup muka semasa bekerja. Lembaga Tatatertib Jawatan Kumpulan 'C', Jabatan Peguam Negara ('lembaga tatatertib itu') telah membuat keputusan bahawa tindakan tatatertib patut diambil terhadap beliau dengan tujuan memecatnya dan telah memberitahu Suruhanjaya Perkhidmatan Awam ('SPA') tentang keputusannya. Setiausaha SPA telah meminta perayu supaya menunjukkan kausa mengapa beliau tidak seharusnya dipecat. Jawapan perayu telah memberikan sebab-sebab mengapa beliau memakai 'purdah' dan memberikan petikan ayat daripada Al-Quran. SPA telah membuat keputusan untuk memecat perayu daripada perkhidmatan kerajaan di bawah perintah am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 ('PA 'D''). Perayu telah membawa suatu tindakan di Mahkamah Tinggi untuk mencabar keesahan pemecatannya oleh SPA. Tindakan itu telah dibuang. [Lihat [1992] 1 MLJ 513.]

Perayu telah membuat rayuan atas alasan bahawa: (i) keputusan untuk memecat beliau sebenarnya telah dibuat oleh lembaga tatatertib itu dan bukannya SPA, yang pada hakikatnya merupakan kuasa tatatertib yang berkenaan di bawah perintah 26 PA 'D'; (ii) beliau tidak diwajibkan untuk mematuhi surat pekeliling itu kerana ianya tidak menyatakan perkataan 'purdah'; (iii) hak perlembagaan beliau di bawah perkara 11(1) Perlembagaan Persekutuan untuk menganuti dan mengamalkan agamanya telah dilanggar; dan (iv) beliau terpaksa memakai purdah untuk mengelakkan 'fitnah' terhadapnya kerana, menurut Surah 24, seorang wanita Islam mesti sentiasa menutup mukanya, kecuali matanya.

Diputuskan, menolak rayuan itu:

(1) Prosedur yang digunakan oleh lembaga tatatertib itu dan SPA telah mematuhi perintah 24 dan 26 PA 'D' dengan ketat. Lembaga tatatertib itu telah membuat keputusan bahawa prosiding pemecatan patut diambil terhadap perayu dan merujukkan perkara itu kepada SPA, yang telah kemudiannya menulis surat tunjuk kausa kepada beliau. Perayu telah diberi peluang sepenuhnya untuk membela diri dan, selepas memberikan pertimbangan yang wajar terhadap pembelaannya, SPA telah membuat keputusan untuk memecat beliau. Oleh itu, perayu telah gagal atas alasan pertama.

(2) Tidak ada ketaksaan di dalam surat pekeliling yang tidak membenarkan pegawai awam wanita memakai, antara lain, sebarang pakaian yang menutup muka. Maksud perkataan 'purdah' di dalam kamus adalah kain atau tirai untuk menutup seseorang perempuan supaya tidak dapat dilihat ataupun kain atau tirai untuk menutup muka seseorang perempuan. Tidak boleh dikatakan bahawa surat pekeliling itu tidak jelas kepada perayu ataupun bahawa beliau tidak memahami maksud atau tujuannya.

(3) Kebebasan agama yang dijamin di bawah perkara 11(1) Perlembagaan Persekutuan tidak mutlak kerana perkara 11(1) tidak membenarkan sebarang tindakan yang bertentangan dengan sebarang undang-undang am berkaitan dengan ketenteraman awam, kesihatan awam atau kemoralan. Larangan terhadap seseorang pegawai awam wanita untuk memakai pakaian yang menutup mukanya semasa bekerja tidak menjejaskan hak perlembagaan perayu untuk mengamalkan agamanya. Pemakaian purdah tidak kena-mengena dengan hak perlembagaan perayu untuk menganuti dan mengamalkan agama Islam.

(4) Pentafsiran perayu tentang Surah 24 disalah tanggap. Di dalam keadaan sedemikian, hakim itu bertindak secara betul apabila menolak aspek ini dalam keterangan perayu berkenaan dengan pemakaian purdah.]

Notes

For cases on dismissal of public servants, see 10 *Mallal's Digest* (4th Ed) paras 1324–1359.

For cases on the freedom of religion, see 3 *Mallal's Digest* (4th Ed) para 560; [1989] Mallal's Digest 197; [1990] Mallal's Digest 145.

Cases referred to

Abdul Rahman bin Isa v Public Service Commission, Malaysia [1991] 2 MLJ 240 (refd)

Bugdaycay v Secretary of State for the Home Department [1987] 1 All ER 940; [1987] AC 514; [1987] 2 WLR 606 (folld)

Che Omar bin Che Soh v PP [1988] 2 MLJ 55 (refd)

Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364 (refd)

Legislation referred to

Federal Constitution art 11(1)

Public Officers (Conduct and Discipline) Chapter 'D' General Orders 1980 orders 24, 26

Public Services Disciplinary Board Regulations 1972 reg 3(2)

Appeal from: Civil Suit No R8–21–7 of 1987 (High Court, Kuala Lumpur)

Karpal Singh (*Karpal Singh & Co*) for the appellant.

Lim Heng Seng (Senior Federal Counsel) (*Andri A Badri*, Federal Counsel, with him) for the respondents.

Cur Adv Vult

Mohamed Dzaiddin SCJ (delivering the judgment of the court): The appellant was formerly a clerk attached to the office of the Perak State Legal Adviser, Ipoh, until her dismissal from public service on 16 December 1986. It was a well-known fact that the appellant had been wearing a black 'purdah' as part of her daily attire during office hours. The 'purdah' covered the whole of her body from head to foot, leaving only a slit in front of her fact, exposing her pair of eyes.

On 18 February 1985, the Government of Malaysia issued Service Circular No 2 of 1985 pertaining to dress code for civil servants. Under para 2.2.1, women officers were prohibited from wearing jeans, slacks, shorts and any dress which covered the face during office hours. The service circular applied to all the staff of the State Legal Adviser's office, Ipoh. In the case of the appellant, her attention was particularly drawn to it whereby she was advised by the then State Legal Adviser not to wear any clothes which covered her face. Unfortunately, she took no notice of the advice and persisted in wearing the same attire during work on the ground that as a Muslim, she was required by the Quran and hadith of the Prophet to cover her face and not to expose it in public. In the result, the chairman

of the disciplinary board for Group C officers at the Attorney General's chambers ('the disciplinary board') decided, after considering the report on the appellant's refusal to comply with the circular, to take disciplinary action against her with a view to dismissal from service. However, in view of reg 3(2) of the Public Services Disciplinary Board Regulations 1972, the chairman of the disciplinary board had no power of dismissal. The disciplinary board then wrote to the secretary of the Public Services Commission ('the PSC') on 24 August 1985 informing the latter of the disciplinary board's decision, the relevant para 1 of which stated:

> Saya adalah diarah dengan hormatnya memaklumkan bahawa jabatan ini ada menerima laporan bahawa Cik Halimatussaadiah bte Hj Kamaruddin, pegawai kerani am di Pejabat Penasihat Undang-Undang Negeri Perak, Ipoh, Perak, telah melanggar peraturan pakaian semasa bekerja sebagaimana ditetapkan di bawah Pekeliling Perkhidmatan Bil 2 Tahun 1985. Setelah meneliti laporan tersebut dan Lembaga Tatatertib Jawatan Kumpulan 'C', Jabatan Peguam Negara berpuas hati bahawa pegawai ini seharusnya dikenakan tindakan tatatertib dengan tujuan buang kerja.

About a year later, on 5 August 1986, the PSC sent a show cause letter to the appellant why she should not be dismissed from service. The material part of the letter stated:

> Puan
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> Kenyataan alasan-alasan membuang kerja
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> Saya memaklumkan iaitu berikutan dengan laporan yang diterima, maka suruhanjaya ini sebagai pihak berkuasa tatatertib yang berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja terhadap puan di bawah perintah am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 atas pertuduhan berikut:
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> > 'Bahawa Puan Halimatussaadiah bte Hj Kamaruddin yang bertugas sebagai pegawai kerani am, Jabatan Penasihat Undang-Undang Negeri Perak, Ipoh telah didapati mulai 18 April 1985 hingga sekarang masih memakai pakaian yang menutup muka semasa bekerja di pejabat walaupun ianya bertentangan dengan Pekeliling Perkhidmatan Bil 2 Tahun 1985 sebagaimana yang dimaklumkan kepada puan melalui Edaran Penasihat Undang-Undang Negeri Perak bertarikh 18 April 1985. Perbuatan puan itu adalah satu kesalahan yang tidak bertanggungjawab dan engkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai engkar perintah iaitu bertentangan dengan perintah am 4(2)(g) dan 4(2)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.'
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> 2 Mengikut kehendak perintah am 26(2), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980, puan adalah diminta mengemukakan:
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> (a) jawapan kepada pertuduhan ini; dan
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> (b) hujah-hujah sebagai pembelaan diri mengapa tindakan tatatertib buang kerja tidak boleh diambil terhadap puan sekarang.

Jawapan dan hujah-hujah pembelaan diri puan itu hendaklah dikemukakan kepada Setiausaha, Suruhanjaya Perkhidmatan Awam melalui Ketua Jabatan puan dalam tempoh dua puluh (20) hari daripada tarikh puan menerima surat ini. Sekiranya puan tidak memberi sebarang jawapan dalam tempoh masa yang ditetapkan itu, puan akan dianggap sebagai tidak hendak mengemukakan sebarang pembelaan diri dan perkara ini akan diputuskan atas keterangan-keterangan yang ada sekarang ini sahaja.

3 Sila puan akui penerimaan surat ini.

In response to the above letter, the appellant sent a 21-page reply giving her reasons why she would continue to wear the 'purdah', quoting, inter alia, verses from the Quran and hadith.

Finally, on 10 November 1986, the PSC decided to dismiss her from service under the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980 ('GO 'D'') order 26. The letter of dismissal dated 16 December 1986 stated as follows:

Puan

Keputusan Lembaga Tatatertib Suruhanjaya Perkhidmatan Awam

Saya diarah menarik perhatian kepada surat suruhanjaya ini bil SPA Sulit 80223/3/(16) bertarikh 5 Ogos 1986 meminta puan mengemukakan hujah-hujah bagi membebaskan diri puan daripada tindakan tatatertib dengan tujuan buang kerja yang akan diambil ke atas puan di bawah perintah am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980. Puan telah mengemukakan jawapan sebagai pembelaan diri menerusi surat puan bertarikh 30 Ogos 1986.

2 Dimaklumkan bahawa Suruhanjaya Perkhidmatan Awam dalam mesyuaratnya yang telah diadakan pada 10 November 1986 setelah menimbangkan dengan teliti kes puan itu pada keseluruhannya telah memutuskan bahawa puan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta.

On 26 October 1987, the appellant filed a writ against the PSC in the High Court, Kuala Lumpur challenging the validity of her dismissal by the PSC and seeking the following declarations: (a) that para 2.2.1 of the said service circular which in effect prohibited the wearing of the 'purdah' was null and void, being in contravention of art 11(1) of the Federal Constitution ('the Constitution'); (b) that her purported dismissal from service was null and void, inoperative and of no consequence; (c) for an order for her reinstatement, account to be taken of her salary, emoluments, benefits and for other consequential loss; (d) costs; and (e) any further or other reliefs.

In the High Court, the following grounds were canvassed by the appellant:

(a) There were material irregularities in the procedure adopted by the first respondent in attempting to initiate disciplinary proceedings against her in that the first respondent should have stated the grounds upon which it was intended to take disciplinary action and not preferred a charge against her as contained in the show cause letter

dated 5 August 1986. There is no such thing as requesting a public officer to show cause why disciplinary proceedings should not be taken against him. Disciplinary proceedings had in fact already commenced when it was decided to proceed against her under order 26(1). She further pleaded that due to the said material irregularities mentioned hereinbefore, she was absolved from having to reply to the said show cause letter.

(b) The ground upon which her purported dismissal was based was in contravention of her constitutional right to practise the Islamic religion as contained in the Quran, hadith and the teaching of the ulamak and hukum Islam. Her use of the purdah during office hours did not conflict with her duties.

(c) The first respondent had failed to comply with the mandatory provisions of general order 24 of GO 'D'.

(d) The first respondent had breached the rules of natural justice in failing to inform her of the complaint against her.

(e) Paragraph 2.2.1 of the Service Circular No 2 of 1985 was vague and uncertain.

(f) The first respondent had failed to make a finding of guilt before imposing the punishment of dismissal, which was procedurally defective.

The High Court dismissed the appellant's action with costs. [See [1992] 1 MLJ 513.] Hence, this appeal.

Before us, the appellant challenged the correctness of the learned judge's decision on five grounds. The first ground was on the non-compliance with the mandatory requirements of order 24 of GO 'D'. The complaint of the appellant was that the learned judge erred in not concluding that the decision-making process leading to her dismissal was flawed because of the non-compliance with the mandatory requirements of order 24 of GO 'D'.

Order 24 of GO 'D' states:

> In every case of an alleged breach of discipline by any officer except as provided for under General Order 27(a) and (b), the Chairman of the Appropriate Disciplinary Authority shall, in the first instance, before commencing any disciplinary proceeding in the matter, consider whether the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank.

Encik Karpal Singh, for the appellant, repeated the same complaint with respect to this ground, as he did before the learned judge in the court below. First, counsel submitted that the Attorney General's chambers was not the appropriate disciplinary authority under order 24. On the contrary, counsel contended that the PSC was the appropriate disciplinary authority as in the case of *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364. In that case, Shamsiah, a bookbinder

with the Government Printers Department, Kuala Lumpur, was dismissed by the PSC after she was found guilty of negligence and dereliction of duty. The disciplinary action was initiated by the PSC. Secondly, the letter dated 24 August 1985 addressed to the secretary of the first respondent from the Attorney General's chambers was not sufficient to comply with the mandatory requirements of order 24 of GO 'D'. The decision to dismiss the appellant should have been made by the PSC. Therefore, if the said order 24 was not complied with, the decision of the PSC was bad and the appellant's dismissal was null and void. Counsel relied on a High Court decision in *Abdul Rahman bin Isa v Public Service Commission, Malaysia* [1991] 2 MLJ 240. We note that the above issues were dealt with by the learned judge in his grounds of decision, reported in [1991] 1 MLJ 513 at pp 522, 523. For the sake of clarity, we quote the following relevant passages from the judgment:

> I note that the chairman of the disciplinary board for 'officers in Group C' in the Attorney General's Chambers who is the Attorney General himself, as provided under para 1(v) of the Regulations, had already made a decision under order 24 of GO 'D' that this was a case which merited a disciplinary action with a view to dismissal. Since the definition of 'disciplinary authority' includes 'a board of officers' appointed by the Yang di-Pertuan Agong under cl (5B) of art 144 of the Federal Constitution, I find the provision of order 24 of GO 'D' was sufficiently complied with when a letter dated 24 August 1985 addressed to the secretary of the PSC signed by the administrative officer in the Attorney General's department under direction to convey that decision made under order 24 of the GO 'D' ...
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> The reason why this disciplinary board for officers in Group C sent this request to the PSC is because the board under reg 3(2) of the Regulations did not have the power of dismissal. Nevertheless, the chairman of the disciplinary authority (or the board) had complied with order 24 of GO 'D'. The disciplinary action against the plaintiff started when a report was received by the disciplinary board for Group C officers whose chairman, having considered the report, was of the view that the breach of disciplinary offence committed by the plaintiff merited the punishment of dismissal and the subsequent action of the PSC is a continuation of the action begun by the disciplinary board for officers in Group C of the Attorney General's Chambers. In any event the chairman of the PSC must have decided this question under order 24 of GO 'D' or else there would have been no further proceedings taken against the plaintiff by the PSC. His decision under order 24 of GO 'D' is not required to be conveyed to the plaintiff or to any one else. The purpose of order 24 of the GO 'D' is quite clear. When the chairman of the appropriate disciplinary board receives the report, he is not required to convene the board meeting. It is enough that he considers the gravity of the alleged disciplinary offence committed, and decides whether under the circumstances, proceedings should be taken with a view to dismissal or not.

Needless to say, we are in complete agreement with the reasoning and conclusions of the learned judge. In addition, we would say that upon considering the entire decision-making process in this case, we are satisfied that the PSC had acted fairly and properly against the appellant, giving her every opportunity of being heard. In this regard, a passage from the

A speeches of Lord Bridge and Lord Templeman in *Bugdaycay v Secretary of State for the Home Department* [1987] 1 All ER 940; [1987] AC 514; [1987] 2 WLR 606 may be usefully recalled. Lord Bridge stated ([1987] 1 All ER 940 at p 952; [1987] AC 514 at p 531; [1987] 2 WLR 606 at p 619) that courts were entitled within limits:

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> ... to subject an administrative decision to the more rigorous examination, to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual's right to life and, when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny.

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And Lord Templeman said this ([1987] 1 All ER 940 at p 956; [1987] AC 514 at p 537; [1987] 2 WLR 606 at p 625):

> ... where the result of a flawed decision may imperil life or liberty a special responsibility lies on the court in the examination of the decision-making process.

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The procedure adopted by the chairman of the disciplinary board and the PSC, in our view, followed strictly orders 24 and 26 of GO 'D'. The appellant was given every opportunity to exculpate herself. It is clear from the evidence that the chairman of the disciplinary board, upon receipt of the report from the State Legal Adviser, Perak, of the appellant's refusal to E comply with the said service circular, decided under order 24 of GO 'D' that proceedings for dismissal should be taken against her. The chairman then referred the matter to the PSC for further action. The PSC accordingly wrote to the appellant a show cause letter which included a charge as to why she should not be dismissed from public service. The appellant then F gave a reply in the form of an exculpatory representation, giving her reasons why she would continue to wear the purdah. Order 26(4) states that if the officer furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. After due consideration, the PSC decided on 10 November 1986 G to dismiss her from service. The letter of dismissal was sent to her on 16 December 1986. In the result, the appellant's first ground must fail.

The second ground of appeal concerned para 2.2.1 of Service Circular No 2 of 1985. It was contended by counsel that the said circular was vague and uncertain because the 'prohibited' dress did not refer to, nor mention H the word 'purdah'. In such circumstances, the appellant was not obliged to comply with it. Therefore the learned judge should have held that the service circular was an unlawful and unreasonable order. The circular provides:

> 2.2 Pakaian wanita
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> I
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> 2.2.1 Pakaian kebangsaan atau pakaian kaum masing-masing yang sesuai dipakai semasa bekerja. 'Jeans', 'slacks', seluar pendek *dan apa-apa pakaian yang menutup muka tidak boleh dipakai semasa bekerja.* (Emphasis added.)

The English translation reads as follows:

> Women's attire
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> National dress or dress of respective communities suitable for wear during work. However, 'jeans', 'slacks', shorts and any dress covering the face are not permitted to be worn during work.

On a careful reading of this circular, we are satisfied that there is no ambiguity in the meaning of para 2.2.1. Clearly, it is intended to apply to all lady officers in the public service who are required to wear during officer hours suitable and presentable attire, such as the national dress or dresses of respective communities except jeans, slacks, shorts and any attire covering the face. According to DW1 of the Public Services Department, the intention of the provision of para 2.2.1 was that a woman officer must not cover her face during office hours. In the context of para 2.2.1, 'purdah' as worn by the appellant would, in our opinion, come within the meaning of 'pakaian yang menutup muka'. 'Purdah', according to *Kamus Dewan* (Edisi baru), means: '1. kain (tirai) untuk menutup orang perempuan supaya tidak dapat dilihat; 2. kain (tirai) yang dipakai di muka perempuan (supaya jangan kelihatan).' Thus, the dictionary meaning of 'purdah' is a cloth or curtain for keeping women from sight; veil, cloth to hide a woman's face. The next question is whether it could be said that the said circular was unclear to her or she did not understand its meaning or purpose. In our view, the answer is self-explained by her 21-page letter to the secretary of the PSC dated 30 August 1986. To all intent and purposes, the letter served as a written exculpatory representation giving grounds, in particular, why she should be allowed to wear the purdah. Moreover, both the State Legal Adviser, Perak and the senior officers from Pusat Islam, Jabatan Perdana Menteri, had met her to explain the said circular and dissuaded her from wearing the purdah. For the above reasons, we do not think there is any substance in this ground.

The third and fourth grounds concerned the broader issue of wearing purdah in the light of art 11(1) of the Constitution. Counsel submitted that by refusing to allow the appellant to wear the purdah, her constitutional right under art 11(1) to profess and practise her religion has been infringed. Secondly, as 'Islam is a complete way of life' and the wearing of a purdah, according to counsel, is a well-known Muslim habit, the learned judge was wrong in not following the spirit and substance of a passage in the judgment of the Supreme Court in *Che Omar bin Che Soh v PP* [1988] 2 MLJ 55 at p 56, where it is stated:

> There can be no doubt that Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial. This way of ordering the life with all the precepts and moral standards is based on divine guidance through his prophets and the last of such guidance is the Quran and the last messenger is Mohammad saw whose conduct and utterances are revered. (See S Abdul A'la Maududi, *The Islamic Law and Constitution* (7th Ed) March 1980.)

It is trite that art 11(1) of the Constitution guarantees the freedom of religion, where every person has the right to profess and practise his religion. However, such right is not absolute as art 11(5) provides that this article does not authorize any act contrary to any general law relating to public order, public health or morality. In the context of Service Circular 2 of 1985 prescribing the mode of dress and prohibiting the wearing of an attire covering the face by a lady officer in the public services during work, we are of the opinion that such prohibition does not affect her constitutional right to practise her religion. First, we accept the opinion of Dato' Mufti Wilayah Persekutuan that Islam as a religion does not prohibit a Muslim woman from wearing, nor requires her to wear a purdah. Secondly, there seem to be a myth or misconception by certain groups of Muslims in Malaysia regarding the wearing of purdah which covers the entire face except the eyes. They believe that it is one of the Islamic injunctions which must be followed strictly. It is noted that purdah in its present form has not been specified in the Holy Quran. However, the Holy Quran uses the word 'hijab' meaning a screen or covering. It seemed that Muslim women living at the time of the Holy Prophet (saw) to whom the Quran was revealed had made the wearing of the veil over their face as a regular part of their dress outside the house. Allah in his instruction to the Prophet (saw) ordered Muslim women to wear an outer garment called 'jilbab', plural 'jalabib', meaning a long gown covering the whole body or a cloak covering the neck and bosom. See Surah 33 (Al Azhab) verses 53 and 59. According to *The Holy Quran — Text, Translation and Commentary* by Abdullah Yusuf Ali, in Surah 33 (Al Ahzab), verse 59, Allah directed the Prophet (saw) to tell his wives and daughters and those of his household, as well as the others to cover themselves with outer garments (jilbab, plural jalabib) when walking abroad, meaning when they were out in the open. The commentary further stated that this was intended to safeguard the position and dignity of the ladies of the Prophet's household and Muslim women generally. The object was not to restrict the liberty of women, but to protect them from harm and molestation under the conditions then existing in Medina.

In addition, it is instructive to quote two passages from a book entitled *On the Islamic Hijab* by Murtaza Mutahhari, published by the Islamic Propagation Organization, Iran, on the Islamic view regarding the covering of the face. At p 15, the learned author stated:

> The philosophy of the Islamic 'covering' depends on several things. Some of them are psychological and some relate to the home and the family. Others have sociological roots and some of them relate to raising the dignity of a woman and preventing her debasement.
>
> The hijab in Islam is rooted in a more general and basic issue. That is, Islamic precepts aim at limiting all kinds of sexual enjoyment to the family and the marital environment within the bounds of marriage so that society is only a place for work and activity. It is opposite of the western system of the present era which mixes work with sexual enjoyment. Islam separates these two environments completely.

And added (at p 71) that:

> Islam did not make it obligatory to uncover the face. It said it is obligatory to cover the hair, not to display the face. Clearly, those nations which came to accept Islam were following their own customs because Islamic precepts did not say it was obligatory to display the face, except in the haram. Nor did they say it was forbidden to cover the face, it gave a choice. It left it up to the various nations to practise their own customs of hijab if they so desired.
>
> History shows that non-Arabs felt it was obligatory to cover the face. Thus this custom of covering the face, as we find it now, is not a custom of the Holy Prophet and the Imams.

Thus based on the above quotations and the opinion of Dato' Mufti Wilayah Persekutuan on the wearing of purdah in Malaysia, we can safely conclude, as we do here, that the wearing of purdah has nothing to do with the appellant's constitutional right to profess and practise her Muslim religion. Accordingly, these grounds must fail.

Finally, counsel submitted that the learned judge was wrong in rejecting the appellant's evidence that she was obliged to wear the purdah on the ground of the probability of 'fitnah' against her. According to her understanding of Surah 24 (An Nuur), verses 30 and 31 of the Holy Quran and the hadith, a Muslim woman must always cover her face, except the eyes, to avoid a 'fitnah'. We have, however, examined the commentary on Surah 24 and discovered that this surah has something to do with reprobation of false slander (fitnah) about women. However, we find that there is a misconception on her part with regard to her interpretation of Surah 24 that she must not expose her body including her face. Otherwise, there would be 'fitnah' against her. The message in verses 27–34 of Surah 24 seems to be that 'privacy should be respected and the utmost decorum should be observed in dress and manners'. (*The Holy Quran — Text, Translation and Commentary*, supra.) In the circumstances. the learned judge, relying on the opinion of Dato' Mufti Wilayah Persekutuan, was right to reject this aspect of the appellant's evidence regarding the wearing of purdah.

Therefore, upon considering all the issues canvassed before us and for reasons which we have given above, in our judgment, this appeal must, accordingly, be dismissed with costs. Deposit to be paid to the respondent to account of taxed costs.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim